IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.1445 of 2007
GOKHUL MAHTO, SON OF NATHUNI MAHTO,
RESIDENT OF VILLAGE-PAKUHAWA,
P.S. MAINATER, DISTRICT-WEST CHAMPARAN
..... PETITIONER
Versus
THE STATE OF BIHAR
..... OPPOSITE PARTY

02/ 21-10-2008 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner has prayed for setting aside the order dated 12.09.2007 passed by the Additional Sessions Judge, Fast Track Court-III, Bettiah, West Champaran in Trial No. 12 of 2007 arising out of Gopalpur P.S. Case No. 68 of 2006 whereby petitioner's prayer for release of his Hero Honda motorcycle bearing registration no. BR-22B/8179 has been rejected.

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It appears that on 20.11.2006 on the basis of confidential information the Police apprehended culprits and seized the motorcycles loaded with Ganja in gunny bags. This led to Gopalpur P.S. Case No. 68 of 2006 which is presently pending in the court of Additional Sessions Judge, Fast Track Court-III, Bettiah, West Champaran. It further appears that petitioner Gokhul Mahto being the owner of Hero

Honda motorcycle bearing registration no. BR-22B/8179 applied for release of the same but the learned court below rejected the prayer on the ground that the trial is still pending and Section 63 of the N.D.P.S. Act empowers confiscation of the seized articles as well as the vehicle.

The submission of learned counsel is that the petitioner is the owner of the motorcycle in question. He was not present at the spot at the time of the seizure. He has nothing to do with the seized ganja.

The State counsel, on the other hand, opposed the prayer.

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Thus the position is that the petitioner is not an accused in this case. According to learned counsel petitioner is owner of the seized Hero Honda motorcycle bearing registration no. BR-22B/8179. It is admitted position that the motorcycle in question is lying in the premises of the police station under open sky. Such items like motorcycles are open to vagaries of nature if the same is left uncared for. In such circumstances, only because there is a provision empowering the officials to confiscate the vehicle it will not be proper to reject the prayer for release of the motorcycle during the entire period of the pendency of the criminal case before the criminal Court.

In the circumstances, the prayer for release of Hero Honda motorcycle is allowed and the impugned order dated 12.09.2007 is set aside. It is made clear that this Court has not examined the papers of ownership relating to the motorcycle in question and it will be for the Court below to verify the original documents and he should allow the release of the Hero Honda motorcycle in favour of the petitioner only when he is satisfied that his claim for motorcycle is supported by legal documents and such release shall be ad interim for the pendency of the criminal case and on such terms and conditions as may be fixed by the court below.

This application accordingly stands allowed.

S.Sb/- **(M. Saran, J.)**

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